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Anna Bradshaw

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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 92-122

CALVARY EDUCATIONAL BROADCASTING
NETWORK, INC.

For Renewal of License of
Station KOKS(FM)
Poplar Bluff, Missouri

DATE OF HEARING: November 12, 1992

VOLUME: 2

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PAGES: 31-140

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Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947

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 In the matter of:

CALVARY EDUCATIONAL
 BROADCASTING NETWORK, INC.

MM Docket No. 92-122

For Renewal of License of
 Station KOKS(FM)
 Poplar Bluff, Missouri

The above-entitled matter came on for an
 admissions session pursuant to Notice before Judge
 Joseph Stirmer, Administrative Law Judge, at 2000 L
 Street, N.W., Washington, D.C., 20554, in Courtroom No.
 3, on Thursday, November 12, 1992, at 10:00 a.m.

APPEARANCES:

On behalf of Calvary Educational Broadcasting Network,
 Inc.:

Joseph E. Dunne, III, Esquire
 May & Dunne, Chartered
 1000 Thomas Jefferson St., N.W., Suite 520
 Washington, D.C. 20007

On behalf of FCC Mass Media:

Y. Paulette Laden, Esquire
 James W. Shook, Esquire
 FCC Mass Media Bureau
 Hearing Branch
 2025 M Street, N.W.
 Washington, D.C. 20554

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I N D E X

E X H I B I T S

<u>KOKS</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
No. 1	36	70	
No. 2	36	80	
No. 3	37	98	
No. 4	38	98	
No. 5	38		
No. 6	38		
No. 7	112		113
No. 8	116	118	
No. 9	117	118	
No. 10	117	118	
<u>Mass Media Bureau</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
No. 1	119	133	
No. 2	119	133	
No. 3	120	133	
No. 4	121	133	
No. 5	121	133	
No. 6	121	133	
No. 7	122	133	
No. 8	122	133	
No. 9	122	133	
No. 10	123	133	
No. 11	123	133	
No. 12	123	133	
No. 13	124	133	
No. 14	124	133	
No. 15	124	133	
No. 16	125	133	
No. 17	125	133	
No. 18	125	133	
No. 19	126	133	
No. 20	126	133	
No. 21	126	133	
No. 22	127	133	
No. 23	127	133	
No. 24	128	133	
No. 25	128	133	
No. 26	128	133	
No. 27	129	133	
No. 28	129	133	
Hearing began: 10:00 a.m. Hearing Ended: 12:30 p.m.			

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P R O C E E D I N G S

(10:00 a.m.)

JUDGE STIRMER: Please be seated.

MR. DUNNE: Good morning, Your Honor.

JUDGE STIRMER: Good morning.

MR. DUNNE: Your Honor, before we go on the record, may I raise an issue.

JUDGE STIRMER: Sure.

COURT REPORTER: We are on the record. Do you want me to stop?

JUDGE STIRMER: Please.

(Off the record.)

(On the record.)

JUDGE STIRMER: This is the date scheduled for the Admissions Session in Docket No. 92-122 involving the application of Calvary Educational Broadcasting Network, Inc., for renewal of license for Station KOKS(FM), Poplar Bluff, Missouri. A prehearing conference in this proceeding was held on July 16, 1992. At the conference, matters relating to discovery as well as possible stipulations were, were discussed. Procedures relating to the hearing and the number of possible witnesses were also considered and the hearing schedule was adopted.

I'd like at this time to obtain the

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1 appearances for Calvary Educational Broadcasting
2 Network, Inc.

3 MR. DUNNE: Joseph E. Dunne, III, of the firm
4 of May and Dunne, Chartered.

5 JUDGE STIRMER: And for the Bureau?

6 MS. LADEN: Paulette Laden and James Shook.

7 JUDGE STIRMER: Very well. Are there any
8 preliminary matters?

9 MS. LADEN: Yes, Your Honor. I have some.

10 JUDGE STIRMER: Very well.

11 MS. LADEN: I have -- when we exchanged our
12 exhibits, Exhibit 3 had not been executed. I have
13 executed copies for you and for Mr. Dunne of Exhibit 3.

14 JUDGE STIRMER: Now, should this be substitu-
15 ted for what previously was exchanged?

16 MS. LADEN: Exactly, Your Honor. It's
17 identical except for the fact that it's executed.

18 Also, Your Honor, I wanted to say that Mr.
19 Shook, who will be going to Poplar Bluff, is going to
20 handle the bulk of the, of the U. S. comments of the
21 Admissions Session. But he's got another oral argument
22 this morning, so he'll be coming in later. And I'll
23 be, I'll be doing it for the Bureau until he gets here.

24 JUDGE STIRMER: Very well. All right. Are
25 there any other preliminary matters? All right. Then,

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1 if not, Mr. Dunne, you have the burden of proceeding.
2 Would you want to begin with the identification of your
3 exhibits?

4 MR. DUNNE: Yes, sir, Your Honor. If it's
5 consistent with your wishes, what I would do is to
6 simply identify each of the exhibits and their, their
7 sponsoring witnesses serially, and we can go back and,
8 and --

9 JUDGE STIRMER: Very well. And then I will
10 rule on them individually after you have identified all
11 of them.

12 MR. DUNNE: Okay. KOKS submits -- has sub-
13 mitted or exchanged seven exhibits for your considera-
14 tion, Your Honor. Exhibit No. 1 is entitled The
15 Testimony of Charles -- it should be -- M. Lampe.

16 COURT REPORTER: Could you spell the last
17 name?

18 MR. DUNNE: L A M P E.

19 MS. LADEN: Thank you.

20 JUDGE STIRMER: Charles M., is it?

21 MR. DUNNE: Yes, it is M.

22 JUDGE STIRMER: Instead of the A?

23 MR. DUNNE: That's correct, Your Honor. It's
24 executed on page 17 and has two attachments, Attachment
25 A and Attachment B, consisting in toto of four addi-

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1 tional pages.

2 JUDGE STIRMER: How many pages is that in
3 total?

4 MR. DUNNE: Twenty-one, Your Honor.

5 JUDGE STIRMER: Twenty-one total pages. Very
6 well. The document described by counsel will be marked
7 as KOKS Exhibit No. --

8 MR. DUNNE: 1.

9 JUDGE STIRMER: -- 1.

10 (Whereupon, the document
11 referred to as KOKS Exhibit
12 No. 1 was marked for
13 identification.)

14 MR. DUNNE: Exhibit No. 2, Your Honor, is the
15 testimony of Don Ace-- of Don Stewart. It consists of
16 14 pages, the last page being the executed declaration
17 of Mr. Stewart.

18 JUDGE STIRMER: Very well. The document
19 described by counsel will be marked for identification
20 as KOKS Exhibit No. 2.

21 (Whereupon, the document
22 referred to as KOKS Exhibit
23 No. 2 was marked for
24 identification.)

25 MR. DUNNE: Exhibit No. 3 is the testimony of

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1 Nina Stewart. It consists of 32 pages, the last page
2 being the declaration of Mrs. Stewart, signed.

3 JUDGE STIRMER: That'll be marked as your
4 Exhibit No. 3.

5 (Whereupon, the document
6 referred to as KOKS Exhibit
7 No. 3 was marked for
8 identification.)

9 MR. DUNNE: Your Honor, it also includes
10 eight pages of attachments, Attachment A and Attachment
11 B.

12 COURT REPORTER: Is that 31 pages total?

13 MR. DUNNE: It will be -- I believe it's 40
14 pages total.

15 JUDGE STIRMER: Forty pages total. Very
16 well. That will be --

17 MR. DUNNE: Excuse me, Your Honor. This is
18 three. I'm sorry. It's 12 pages of attachments for 44
19 pages in total.

20 JUDGE STIRMER: Very well.

21 MR. DUNNE: Exhibit No. 4 is the testimony of
22 Joseph Harris -- excuse me -- Harrison. My mistake.
23 It's consisting of two pages, the second being the
24 executed declaration of Mr. Harrison.

25 JUDGE STIRMER: That'll be marked as KOKS

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1 Exhibit No. 4.

2 (Whereupon, the document
3 referred to as KOKS Exhibit
4 No. 4 was marked for
5 identification.)

6 MR. DUNNE: Okay. Exhibit No. 5 is the
7 report of Clark Poole, engineer in charge of -- excuse
8 me -- the engineer in charge of the Grand Island FCC
9 Field Office. It consists of four pages.

10 JUDGE STIRMER: That exhibit will be marked
11 as KOKS Exhibit No. 5.

12 (Whereupon, the document
13 referred to as KOKS Exhibit
14 No. 5 was marked for
15 identification.)

16 MR. DUNNE: Exhibit No. 6, Your Honor, the
17 report of M. Moffit and K. Raines, consisting of 24
18 pages.

19 JUDGE STIRMER: That exhibit will be marked
20 as KOKS Exhibit No. 6.

21 (Whereupon, the document
22 referred to as KOKS Exhibit
23 No. 6 was marked for
24 identification.)

25 MR. DUNNE: KOKS' seven exhibit -- seventh

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1 exhibit is petitions in support of KOKS.

2 Your Honor, to be honest with you, I don't
3 have that exhibit with me. It's really my mistake and
4 I can't tell you how many pages it is. Paulette, do
5 you have a copy?

6 MS. LADEN: I have one.

7 MR. DUNNE: Your Honor, I'm sorry. The
8 exhibit I exchanged evidently wasn't numbered. I'm
9 sorry.

10 JUDGE STIRMER: Yeah. All right. Why don't
11 we just --

12 MR. DUNNE: That's --

13 JUDGE STIRMER: -- get the numbering -- until
14 you have an opportunity to count these pages and tell
15 us how many are in this exhibit. All right. I'll
16 reserve identifying this exhibit, Mr. Dunne, till
17 you've have an opportunity to, to count these pages.
18 So, we'll proceed.

19 MR. DUNNE: Thank you.

20 JUDGE STIRMER: The first break when you have
21 an opportunity, you can count the numbers and then I'll
22 mark it for identification.

23 MR. DUNNE: Okay. Thank you, Your Honor.

24 JUDGE STIRMER: All right.

25 MR. DUNNE: I appreciate the --

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1 JUDGE STIRMER: Now, do you want to offer
2 these exhibits into evidence, Mr. Dunne, and I can hear
3 if the Bureau has an objections to them?

4 MR. DUNNE: Yes, sir, I do --

5 JUDGE STIRMER: Okay.

6 MR. DUNNE: -- offer them in evidence.

7 JUDGE STIRMER: All right. Let's take them
8 individually.

9 MS. LADEN: All right. Your Honor, we have
10 several objections to Exhibit 1.

11 JUDGE STIRMER: All right. You're offering
12 Exhibit 1 now, Mr. Dunne, correct?

13 MR. DUNNE: Yes, I am.

14 JUDGE STIRMER: All right. All right. Let
15 me hear the Bureau's objections.

16 MS. LADEN: At paragraph 4, we object to the
17 entirety of paragraph 4. There is no engineering
18 support for the statement. It's not clear that the
19 witness is competent to testify about these engineering
20 matters.

21 JUDGE STIRMER: What is the purpose of this
22 paragraph, Mr. Dunne? What, what --

23 MR. DUNNE: The purpose of this --

24 JUDGE STIRMER: Are you --

25 MR. DUNNE: -- paragraph, Your Honor, is to

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1 show the, the strength of the various signals that are
2 -- tv signals that are put over Poplar Bluff. The
3 sponsoring witness is a person who runs a tv repair
4 business and is in the business of attempting to improve
5 people's reception of tv signals in Poplar Bluff.
6 And if anybody is qualified to tell you what you can
7 get on the ground in Poplar Bluff, it's this gentleman
8 or someone like him. If, you know, Ms. Laden has any,
9 you know, questions about his qualifications or how
10 long he's been doing it or the support for these statements,
11 it certainly is subject for cross-examination.

12 MS. LADEN: Your Honor, I just don't believe
13 that he's qualified to testify that interference is co-
14 channel interference or where it's from, that, that a
15 channel in Jonesboro is often subject to co-channel
16 interference from a channel in Cargondale (phonetic
17 sp.).

18 MR. DUNNE: Your Honor, Mr. Lampe will be
19 able to testify that co-channel interference shows up
20 on a tv set in a different way than blanketing interference
21 and other, other interference. He's been doing
22 this for many years and knows what he's talking about.

23 JUDGE STIRMER: I think Bureau counsel has
24 some validity to her objection on the basis of the
25 references adhere to co-channel interference from

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1 various different stations. I don't know that Mr.
2 Lampe has been established as a competent witness to
3 testify as to those matters. I think as a, a televi-
4 sion repairman in the area, he might be competent to
5 testify as to his opinion as to the quality of the
6 signals being received based upon the various, various
7 functions he has performed in connection with the
8 service that he renders as a TV repairman. But I have
9 problems with the reference to co-channel interference
10 and I don't know how Mr. -- certainly, at this point I,
11 I have nothing before me which would qualify this
12 witness to testify to those matters.

13 MR. DUNNE: Again, Your Honor, I would submit
14 that his qualifications are set forth in the first
15 couple of -- first paragraph -- first two paragraphs --
16 three paragraphs of this, this exhibit. He's been on
17 the ground. He's been doing this for 12 years or --

18 JUDGE STIRMER: Well --

19 MR. DUNNE: -- so many years. When he sees
20 co-channel interference on a television set, when he's
21 orienting antennas, which you have to do in Poplar
22 Bluff, he knows what stations he's orienting to and
23 away from.

24 JUDGE STIRMER: Well, I, I'm not going -- I'm
25 going to reserve ruling on the admissibility of, of

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1 | this paragraph until I hear further from Mr. Lampe with
2 | respect to his qualifications to testify to these
3 | matters. Again, I have no problem with him testifying
4 | generally as to what his opinion is of the quality of
5 | the signals received in this community. But to attri-
6 | bute certain deficiencies in the signal to certain
7 | factors, that's a matter that I don't have the, the
8 | knowledge to --

9 | MR. DUNNE: Well, I'm sure if he's asked,
10 | Your Honor, he'll satisfy you as to why there's --

11 | JUDGE STIRMER: All right.

12 | MR. DUNNE: -- bits in the --

13 | JUDGE STIRMER: Very well. Proceed.

14 | MS. LADEN: Your Honor, at page 3, the end
15 | of, of paragraph 5, which begins at the previous page
16 | -- actually, it begins at the bottom of page 2.
17 | "Blanketing interference usually blanks out the channel
18 | completely or shows in the picture as zig-zag..." and
19 | so on till the end of that paragraph. Once again,
20 | there's no basis to suppose that the witness is quali-
21 | fied to testify as to what FM blanketing looks like.

22 | JUDGE STIRMER: Do you want to respond to
23 | that, Mr. Dunne?

24 | MR. DUNNE: I would reiterate what I've said
25 | before, Your Honor. He's also worked, worked -- it

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1 | says here someplace that he worked -- has had some
2 | experience with blanketing interference with another
3 | radio station. He has worked with radio stations in a
4 | -- as a contract engineer, including FM stations. He's
5 | in the business of curing reception of people's televi-
6 | sion sets and presumptively would know what different
7 | kinds of interference are if he's going to cure them.
8 | Again, he's subject for cross-examination.

9 | JUDGE STIRMER: All right. I'll admit that
10 | to stand. You can cross-examine him on his knowledge
11 | of this. But if I find that he has no knowledge of
12 | these matters, then the testimony will be stricken.

13 | MS. LADEN: On page 3, at the bottom of page
14 | 3, the middle of paragraph 6, "many viewers in the
15 | area..." through to the end of that page and that
16 | paragraph. Those statements are hearsay.

17 | JUDGE STIRMER: Are you offering this to show
18 | the state of mind of this witness or to establish these
19 | facts as truthful?

20 | MR. DUNNE: No, both, Your Honor.

21 | JUDGE STIRMER: Both?

22 | MR. DUNNE: But in, in point of fact, there
23 | will be plenty of record evidence that this -- that the
24 | highway patrol caused interference, and on intermittent
25 | basis.

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1 JUDGE STIRMER: Well, I'm -- I'll only re-
2 ceive this for the state of mind of the witness, not
3 for the truth of the matters asserted.

4 MR. DUNNE: Your Honor, also, I -- you know,
5 the fact that it's hearsay does not necessarily disqua-
6 lify it. It's my understanding that in an
7 administrative proceeding, trustworthy or reliable
8 hearsay is at times accepted. You know, once again,
9 this is a --

10 JUDGE STIRMER: Well, I understand. I --
11 that's correct. But the statements in here, Mr. Dunne,
12 "many viewers in the area," how many are many? Or what
13 may be considered many to Mr. Lampe, I might consider
14 few. I'll just accept this for purposes of showing
15 state of mind of the witness with -- but I'm not accep-
16 ting it for the truth of the matters asserted.

17 MS. LADEN: Your Honor, at the bottom of page
18 6, the end of paragraph 10, "as best as I can recall, I
19 believe that he said he would write his problems down
20 and mail them to me and I left." Except for the state-
21 ment "and I left," the rest of it is hearsay.

22 MR. DUNNE: That's not true, Your Honor.
23 That's a verbal lie. He's reporting what he was told.

24 MS. LADEN: Your Honor, maybe I should ask
25 what purpose it's being offered for.

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1 JUDGE STIRMER: What is the purpose of this?

2 MR. DUNNE: I'm sorry, Your Honor? I missed
3 that.

4 JUDGE STIRMER: What is the purpose of this
5 offer?

6 MR. DUNNE: To establish that a
7 representative of KOKS went to the channel, went to
8 these people houses, asked for them to provide him with
9 a list of complaints that he could resolve, and that
10 they said they would and that they didn't.

11 JUDGE STIRMER: I'll overrule the objection.
12 Cross-examine him on that.

13 It's not a very clear statement because it
14 has so many caveats. "As best as I can recall, I
15 believe..." I don't know what that's worth, Mr. Dunne.

16 All right.

17 MS. LADEN: At the bottom of page 7, para-
18 graph 12, the second sentence and the third sentence,
19 the second sentence begins, "He seemed generally satis-
20 fied..." And --

21 JUDGE STIRMER: I'll, I'll strike that sen-
22 tence.

23 MS. LADEN: In the next sentence, he did
24 mention that the second harmonic was better than requi-
25 red. That's hearsay.

1 JUDGE STIRMER: I'll strike that as well.

2 MS. LADEN: And, then, later on on page 8,
3 where it begins, "He told me that Mrs. Smith..." The
4 rest of that paragraph we would object as hearsay, Your
5 Honor.

6 JUDGE STIRMER: I'll strike that as hearsay.

7 MR. DUNNE: Your Honor, may I respond to
8 that?

9 JUDGE STIRMER: Certainly.

10 MR. DUNNE: Your Honor, one of the -- again,
11 hearsay is not always and necessarily excludable in an
12 administrative hearing. The status of Channel 6 and
13 its reception is an important issue in this proceeding.
14 We have a report from an FCC engineer, Clark Poole to
15 be exact, that said he told people, specifically Mrs.
16 Smith and Mrs. Hillis, and Mrs. Smith and Mrs. Hillis
17 presumptively on cross-examine will con-- will confirm
18 this fact, that KOKS was not responsible for curing
19 interference with Channel 6. It's an important point
20 that needs to be in the record.

21 JUDGE STIRMER: Let me ask you this, and let
22 me ask your view of this. If these residents were
23 receiving Channel 6 before KOKS went on the air and
24 thereafter were unable to receive that signal, did the
25 station have any responsibility for restoring that

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1 | signal to them?

2 | MR. DUNNE: Ms. Laden?

3 | MS. LADEN: Your Honor, the, the hearing
4 | designation order addresses that specifically, and the
5 | Commission found, to my knowledge, for the first time
6 | in this designation order that there is no exclusion of
7 | responsibility for Channel 6. Or put in the reverse,
8 | that there is a responsibility to restore service for
9 | stations that are outside of the grade -- that, that do
10 | not put a grade B signal in. And that is in the hear-
11 | ing designation order.

12 | However, Your Honor, that's not the basis for
13 | my objection. The basis for my objection is the fact
14 | that he's offering the statement for the truth of the,
15 | of the matters herein --

16 | MR. DUNNE: No, Your Honor.

17 | MS. LADEN: -- that there is no responsibi-
18 | lity to cure Channel 6, that Mrs. Smith was an unhappy
19 | lady, that -- they're being offered for the -- that the
20 | -- that, that Mr. Poole was satisfied with the techni-
21 | cal shape the station was in. We have an ineptness
22 | issue. This is being offered for the truth --

23 | MR. DUNNE: You've already stricken that,
24 | Your Honor. Let's, let's get back to --

25 | JUDGE STIRMER: Yeah --

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1 MR. DUNNE: -- the Channel 6 situation.

2 MS. LADEN: Oh, I, I'm sorry. I thought we
3 were discussing --

4 MR. DUNNE: We're going --

5 MS. LADEN: -- the interviews.

6 JUDGE STIRMER: I had stricken the first --
7 the second sentence.

8 MS. LADEN: I apologize, Your Honor. I
9 thought we were discussing --

10 JUDGE STIRMER: And the third sentence of
11 paragraph 12.

12 MR. DUNNE: Your Honor, if I can butt in
13 here, and I'm speaking specifically to the paragraph
14 that begins, "He told me...the very unhappy lady and
15 about the grade B contour." We're talking -- well,
16 specifically about the state of mind, not only of Mr.
17 Lampe, but of Mr. Clark and of the people at KOKS who,
18 as Mrs. Laden properly pointed out, until this designa-
19 tion order, there was not a single Commission statement
20 that said that you were responsible for curing inter-
21 ference to a station that was far beyond its grade B
22 contour.

23 JUDGE STIRMER: Well --

24 MR. DUNNE: This goes to the state of mind of
25 people who are accused of a misrepresentation issue,

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1 about curing interference, to say, hey, we don't think
2 we had an obligation to do this. And now that, that
3 was confirmed, not only from other sources, but confir-
4 med to our engineer and the engineer told other people.
5 That, you know, it was not unreasonable for them --

6 JUDGE STIRMER: Let me --

7 MR. DUNNE: -- to believe --

8 JUDGE STIRMER: Did Mr. Poole in fact tell
9 these people these things, that they weren't respon-
10 sible for correcting --

11 MS. LADEN: I have no --

12 JUDGE STIRMER: -- reception?

13 MS. LADEN: -- idea, Your Honor.

14 JUDGE STIRMER: All right.

15 MS. LADEN: I, I have no idea. And it seems
16 to me if that were to be established, I don't mind if
17 it comes in, Your Honor, to show that these people
18 believe this.

19 MR. DUNNE: But, Your Honor, that's all it's
20 being offered for.

21 MS. LADEN: Your Honor, if it's offered to
22 show that because of statements made by an FCC engineer
23 these people believed it, believed it, I have no objec-
24 tion, because it goes to state of mind. But Mr. Dunne
25 just got done saying that that belief was reasonable,

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1 and that's the difficulty I'm having. To the extent
2 that that belief was justified or reasonable, I believe
3 that, that, that that is hearsay.

4 JUDGE STIRMER: Well, let me ask this further
5 question. Is Mr. Poole going to be a witness?

6 MR. DUNNE: No, he's not, Your Honor. We're
7 -- I haven't called him. I'm just going to submit his,
8 submit his report.

9 MS. LADEN: And, Your Honor, we have an
10 objection to that report. It seems that the, that the
11 witness who can testify to this is Mr. Poole and not
12 Mr. Lampe.

13 JUDGE STIRMER: Why aren't you going to -- do
14 you want Mr. Poole for cross-examination?

15 MS. LADEN: No, Your Honor. We have an
16 objection to the report. We have an engineer for
17 cross-examination, Mr. Ramage.

18 JUDGE STIRMER: All right. Well, let's,
19 let's go --

20 MS. LADEN: But, that is --

21 JUDGE STIRMER: I -- we're going to have --

22 MS. LADEN: -- we have an engineer for our
23 direct --

24 JUDGE STIRMER: Pardon?

25 MS. LADEN: We have an engineer that we're

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1 offering as part of our direct case.

2 JUDGE STIRMER: All right.

3 MS. LADEN: Mr. Ramage.

4 JUDGE STIRMER: All right. Then, as I take
5 it, you have no objection to the receipt of this infor-
6 mation for state of mind purposes?

7 MS. LADEN: That's correct, Your Honor.

8 JUDGE STIRMER: All right. That's what it
9 will be received for. All right. Let's continue.

10 MS. LADEN: Paragraph 13, the last two sen-
11 tences, "Mr. Moffit told me..." Going to the end of
12 that paragraph, we would object as hearsay.

13 JUDGE STIRMER: Are you offering this for the
14 truth, Mr. --

15 MR. DUNNE: No. Again, it's --

16 JUDGE STIRMER: All right. State of mind?

17 MR. DUNNE: -- something that talks about the
18 state of mind of the engineer --

19 JUDGE STIRMER: All right.

20 MR. DUNNE: -- who was going to be going to
21 the houses.

22 JUDGE STIRMER: All right. This will be --

23 MR. DUNNE: He can testify what -- as to what
24 he actually found when he went to the house.

25 JUDGE STIRMER: All right. This will be

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1 received for the state of mind only.

2 MS. LADEN: And, Your Honor, at the beginning
3 of page 9, which is the middle of paragraph 14 --

4 JUDGE STIRMER: I might add that the exhibit
5 that I have received has a duplicate page 8. I don't
6 know whether you all have that as well.

7 MS. LADEN: We had that also.

8 MR. DUNNE: Oh, did you?

9 JUDGE STIRMER: Okay.

10 MR. DUNNE: Then I hope there's no difference
11 between the page 8s.

12 JUDGE STIRMER: I don't, I don't think there
13 is, but I didn't check each word.

14 MR. DUNNE: I don't think so, Your Honor.

15 MS. LADEN: It -- with the sentence that
16 says, "They told me that they have one and could manu-
17 facture one to fit the need." We object to that sen-
18 tence as hearsay.

19 JUDGE STIRMER: This is in paragraph --

20 MS. LADEN: Paragraph 14.

21 JUDGE STIRMER: -- 14?

22 MS. LADEN: It's the first complete sentence
23 on page 9.

24 JUDGE STIRMER: All right. I'll accept that
25 for state of mind purposes.

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1 MS. LADEN: And, also, Your Honor, the sen-
2 tence that -- in that paragraph that begins, "They told
3 me that the specifications for the filter..." We would
4 object to that. We would object if it's offered for
5 the truth of the matter.

6 JUDGE STIRMER: All right. You, you --
7 again --

8 MR. DUNNE: Again, Your Honor, this is what
9 the guy was told that the thing would do.

10 JUDGE STIRMER: All right. That will be
11 state of mind.

12 MS. LADEN: Your Honor, there's a statement
13 here at the bottom of page 15 which is technically
14 hearsay, "Mr. Stewart told me to use only one filter
15 per household." And it continues for the rest of that
16 paragraph. But I'm not going to object because the
17 statement is repeated in Mr. Stewart's testimony.

18 JUDGE STIRMER: All right. Now, this is
19 where?

20 MS. LADEN: The bottom of paragraph 15.
21 Mr. --

22 JUDGE STIRMER: Bottom of paragraph 15?

23 MS. LADEN: That's right. "Mr. Stewart --

24 JUDGE STIRMER: All right.

25 MS. LADEN: -- told me to use only one fil-

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